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Hesse GmbH Terms and Conditions of Sale and Delivery

Revision: January 2024

I. General, Scope of Application, Exclusivity

1. These terms and conditions of sale and delivery apply for all our business relations between the supplier or service provider (hereinafter “Supplier”) and the customer (hereinafter “Purchaser”). The terms and conditions of sale and delivery only apply if the Purchaser (§ 14 BGB) is a business owner, legal entity under public law or special fund under public law. The terms and conditions of sale and delivery apply especially for any agreement on the sale or the delivery of goods and products (hereinafter “goods”) regardless of whether the Supplier produces the goods themselves or buys them from a subordinate supplier (§§ 433, 651 BGB). The terms and conditions of sale and delivery apply as a framework agreement for future contracts for the sale or delivery of goods with the same Purchaser, without the Supplier having to refer to it again in each individual case.

2. The terms and conditions of sale and delivery apply exclusively. Diverging, adverse or additional terms and conditions of the Purchaser only become valid as part of the contract if the Supplier has expressly stated consent. This requirement of consent applies in any event, for example even if we, being aware of the Purchaser’s general terms and conditions, deliver goods without reservation.

3. Legally relevant declarations and notifications that have to be given by the Purchaser to the Supplier after conclusion of the contract (e.g. the setting of a deadline, a warning notice, a declaration of rescission) are required to be in writing in order to be effective.

4. References to the validity of statutory regulations shall only have clarifying significance. Even without such a clarification, the statutory regulations apply, as far as they are not directly changed or explicitly excluded in these terms and conditions of sale and delivery.

5. We reserve all proprietary rights and copyrights of cost estimates, drawings and other documents; these may be made available to third parties only with our expressed approval. Drawings and other documents that are part of the offer shall be promptly returned or paid for upon request or if the order has not been placed with us. Clauses 1 and 2 apply respectively for the documents of the Purchaser, however, these can be made admissible to such third parties, who are allowably entrusted with deliveries.

6. Offers of the Supplier are without commitment. This also applies if the Supplier has provided catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents, including in electronic form.

7. The ordering of the goods by the Purchaser is valid as a binding contract. Unless otherwise expressly stated in the order, the Supplier shall be entitled to accept said offer of a contract within 2 weeks of receipt thereof.

8. The acceptance can be made in written form (e.g. order confirmation) or through delivery of the goods to the Purchaser.

9. Our Software License Conditions (Software-Lizenzbedingungen) shall apply to all software and/or software components. These can be downloaded here: <https://www.hesse-mechatronics.com/agb/>

II. Prices

The prices are valid at delivery without installation or mounting, ex works, excluding package and do not include VAT.

III. Title Retention

1. The goods shall remain the property of the Supplier until the Purchaser has satisfied all claims (secured claims) which the supplier can make on him under the terms of the business relationship. Prior to full and complete settlement, pledging and assignment as security shall be prohibited and resale shall only be permitted for resellers in the course of their usual business, under the condition that the reseller receives payment from his customer. Any intervention expenses which may arise are to be borne by the Purchaser.

Should the value of all charging liens, as in no.1, due to the Supplier exceed by 20% the amount of all secured claims, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.

2. The retention of title will cover the new products resulting from the processing. This processing will be undertaken by the Purchaser on our behalf, without any obligations on our part. The Purchaser will transfer the ownership rights of the new products to be created to us with immediate effect under the simultaneous agreement that he will keep the same in safe custody for us. Likewise, the above-mentioned provision will be valid if the Purchaser undertakes processing with other goods that do not belong to us, unless the goods delivered by us represent the main thing, with the stipulation that we will be granted co-ownership of the new products in the proportion of the value of our reserved goods to the value of the other goods on the date of the processing.

3. The demands of the Purchaser from the further sale of the goods subject of retention of title will be ceded to us with immediate effect, irrespective of whether the goods subject to retention of title are sold with or without processing to one or more customers. If the sale takes place after processing with our goods along with other goods, then cessation will be valid – provided the goods delivered by us are not the main thing for the part of the demand corresponding to our joint ownership. We hereby accept the cessation.

4. Provided he fulfils his obligations towards us properly, the Purchaser is authorized to withdraw the ceded demands. Otherwise he is obliged to communicate on request, the addresses of the buyers and the amount of the demands along with a copy of the bill. The Purchaser authorizes us expressly to inform the customer about the cessation at our discretion.

5. Checks and bills of exchange are only deemed to have been paid when they are honored

IV. Conditions of Payment

1. Payments are to be made to the designated account of the Supplier.

2. The Purchaser may set off only those claims which are undisputed or non-appealable.

V. Deadline for the Supply of Goods or Services

1. Mutual written statements are conclusive for the deadlines for deliveries or services. The observance of such a deadline presupposes the prompt receipt of all the documents, requisite licenses and releases to be furnished by the Purchaser, the prompt clarification and approval of the plans and the observance of the agreed Terms and Conditions of Payment and other obligations. Should these requirements not be fulfilled on time, the delivery deadline shall be extended by an adequate period of time.

2. If the Supplier is unable to meet delivery dates that have been agreed as binding for no fault of their own (unavailability of goods or services) we will notify the Purchaser without delay, and inform of the expected, new delivery deadline. If the new deadline is unable to be met, the Supplier is entitled to withdraw from the contract in whole or in part; any payments made will be reimbursed without delay. The unavailability of goods or services in this sense particularly includes our suppliers failing to deliver in good time if we have entered into a congruent covering transaction, neither the supplier nor their sub-suppliers being responsible or the supplier is not obliged to purchase in an individual case.

3. The occurrence of delay in delivery is determined according to the statutory regulations. A warning notice (reminder) by the Purchaser is required in any event.

Should we be late with delivery, the Purchaser is entitled to demand compensation for the delay. Per each full calendar week of delivery delay, this compensation shall amount to 0.5% of the net price, but not more than a total of 5% of the value of the delayed goods. The Supplier reserves the right to establish that either no loss has been incurred to the Purchaser or that the loss incurred is significantly lower than the fixed amount.

4. The rights of the Purchaser in accordance with paragraph IX (Other Liability) of these terms and conditions of delivery and sales, and the legal rights of the Supplier, especially upon exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or supplementary performance) remain unchanged.

5. In case of delays in delivery due to force majeure, strike, non foreseeable breakdown, delays in supplies of necessary material for production, lack of cargo space and other circumstances, provided that the Supplier is not responsible for the respective factor, the Supplier is released from the obligation to deliver for the duration of such circumstances and justify a reasonable change of the delivery dates. The Purchaser is entitled, in the case of any delay in delivery, following the expiration of a reasonable extension of time to be set by the Purchaser in writing, to refuse acceptance of the delayed deliveries

6. If the Purchaser is in default of acceptance or if he fails to perform an act of cooperation or if the delivery is delayed for other reasons, for which the Purchaser is responsible, storage charges can be debited to the Purchaser. For each commenced month, beginning after a period of one month after the goods are declared ready for delivery, an amount of 0.5 % of the price of the goods can be charged for storage. The storage costs is limited to 5%, unless higher costs are incurred. This flat rate is, however, to be offset against further monetary claims. The Purchaser is permitted to demonstrate that no or significantly lower damages were incurred.

VI. Place of Performance, Transfer of Risks, Acceptance

1. The delivery is carried out ex warehouse where the place of performance is also

respectively located. On demand and at cost of the Purchaser, the goods can be delivered to a different location (sale to destination). Unless otherwise agreed, the Supplier is entitled to define the mode of delivery of the products (especially the shipping company, shipping route, type of packaging) independently.

2. The risk of accidental loss, destruction or accidental deterioration shall pass to the Purchaser with the handing over of the object. In the case of sale to destination, the risk of accidental loss, destruction or accidental deterioration passes to the Purchaser once the goods are handed over to the shipping company, the carrier or other person or institution determined to carry out the dispatch.

If an acceptance procedure has been agreed on, this is authoritative for the transfer of risk. The statutory provisions on contracts for work and services also apply for the agreed acceptance procedure. It is deemed equivalent to the handover or acceptance if the Purchaser is in default with the acceptance.

VII. Reasonable Partial Deliveries

The Supplier may make appropriate and reasonable partial deliveries and bill them separately, unless one complete delivery is required by the Purchaser.

VIII. Liability for Defects

1. Unless otherwise provided below, the Purchaser's statutory rights apply in the event of any defect in the quality, or in the title, (including incorrect or short delivery and incorrect performance or underperformance).

2. The primary basis of liability for defects shall be the agreement made concerning the quality of the goods.

3. In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the statutory provision (Section 434 (1) paragraphs 2 and 3 of the German Civil Code).

4. The Supplier does not accept any guarantee or any warranty obligation for damage in the following cases: unsuitable or improper use, defective installation by the Purchaser or a third party, the usual wear and tear, faulty or careless handling, excessive use, unsuitable operating media, chemical, electrochemical or electrical influences, unless the Supplier is responsible for them, improper modifications or repair work carried out by the Purchaser or third parties without the prior permission of the Supplier.

5. If the Buyer is a registered merchant in the terms of the HGB (Code of Commercial Law), he is obliged to perform his "duty to inspection and objection" duly in order to pursue any claims for breach of warranty of quality or title. The Purchaser is obliged to examine the goods for defects immediately after delivery and if a defect is found, to report it to the Supplier in writing without delay. If the customer fails to do so, the goods shall be considered as accepted, unless hidden defects are present which could not be detected during careful inspection of the goods. If such a defect arises later written notification thereof must be made without undue delay, otherwise the goods are considered to be approved even in consideration of this defect. The timely dispatch of the notice shall suffice to preserve the Purchaser's rights.

6. If the delivered goods are defective, the Supplier can choose whether to repair the goods or to replace the goods. The Purchaser's right to refuse the selected manner of follow-on fulfillment under the given legal preconditions remains unaffected.

7. The Supplier is entitled to only conduct the follow-on fulfillment if the customer has paid the purchase price. The Purchaser has, however, the right to retain a reasonable portion of the purchase price in relation to the defect.

8. The Purchaser shall give the supplier the time and the opportunity which may be needed to hand over the defective goods for inspection. In the case of a replacement delivery, the Purchaser must return the defective goods in accordance with statutory regulations. The follow-on fulfillment does not include the disassembly of the defective part or the reassembly, if the Supplier was not originally obliged for assembly.

9. In the case of defects, the Supplier will bear the expenses which are required for the purpose of follow-on fulfillment, in particular transport, route, work and material costs (not disassembly and assembly). If, however, the Purchaser's complaint turns out to be unjustified, the Supplier is entitled to claim compensation from the Purchaser for any resulting expenses.

10. If the follow-on fulfillment has failed or a reasonable deadline which is to be set by the Purchaser for the subsequent performance has expired unsuccessfully or is not required according to the statutory provisions, the Purchaser is entitled to reduce the purchase price or to rescind the contract. This right of withdrawal does not exist with an insignificant defect.

11. The Purchaser's claims for damages or compensation for wasted expenses exist only in accordance with paragraph IX (Other Liability) and are otherwise excluded.

IX. Other Liability

1. Insofar as not otherwise derived from these terms and conditions of sales and delivery, including the following provisions, the Supplier is liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

2. The Supplier is liable – regardless of legal grounds - for intentional and grossly negligent acts only (including those of its legal representatives and agents). Liability for ordinary negligence only arises;

a) in case of damages from injury to life, body or health,

b) for damages resulting from the violation of an essential provision of the agreement (an obligation whose fulfillment makes the proper execution of the agreement possible to begin with and on the adherence to which the contractual partner relies and may rely on a regular basis) in this case, however, the liability of the Supplier shall be limited to the replacement of the resulting damage that can typically be predicted.

3. The limitations of liability arising from article 2 do not apply if the Supplier has fraudulently concealed a defect or has warranted the quality of the goods. The same applies to claims of the Purchaser based on the Product Liability Act.

4. An exclusion or limitation of liability of the Supplier also applies for employees, legal representatives and other assistants.

5. The Supplier accepts no responsibility whatsoever for any costs incurred by the Purchaser due to the recall of products, which the Purchaser manufactured/produced in whole or in part with or by using the Supplier's goods. The Purchaser shall bear full responsibility for the function, quality control and testing of its products.

If, however, it is provided for by law, that the Supplier shall be liable for a recall-action by the Purchaser and this liability cannot be excluded, this liability shall be limited in accordance with clauses 2-4. In addition, the Purchaser shall bear the burden of prove, to show the type and extent of the Supplier's responsibility for the defectiveness of its products (the Purchaser's), as well as to prove that he himself was not able to recognize the defect before placing its products on the market, albeit exercising due diligence and care

6. Withdrawal or cancellation shall be permissible due to a breach of duty which does not consist of a defect only if the Supplier can be held responsible for the breach of duty. A free right of cancellation for the customer (in particular in accordance with Sections 651 and 649 of the German Civil Code) is excluded. In other respects, the statutory provisions and legal consequences apply.

7. None of the previously mentioned clauses have the aim of changing the legal or judicial allocation of burden of proof unless this has been expressly specified.

X. Statute of Limitations

1. Notwithstanding § 438 Par. 1 No. 3 BGB the general statute-of-limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed the statute-of-limitations shall begin with the acceptance. In case the delivered good is a building or a good typically used in the construction of a building (building material), which defectiveness subsequently caused the defect of a building itself, according to statutory regulations, the statute-of-limitations is 5 years from acceptance (§ 438 Par. 1 Nr. 2 BGB). This shall not affect special statutory provisions for the restitution of property of third parties (§ 438 Par 1 Nr 1BGB) of the German Civil Code (BGB) and fraudulent intent of the Supplier (§ 438 Par. 3 BGB).

XI. Applicable Law and Place of Jurisdiction

1. These terms and conditions for sales and delivery and all legal relationships between the Supplier and the Purchaser shall be governed by the law of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) shall not apply. Conditions and consequences of the reservation of title in accordance with Item III are subject to the law of the country where the item is stored if, under said law, a choice of law made in favor of German law is not permitted or is void.

2. If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a separate property under public law, the sole place of jurisdiction, also international, for all disputes arising from the processing of this contractual relationship is agreed as the headquarters of the Supplier in Paderborn. However, the supplier is entitled to take legal actions at the general venue of the Purchaser.

XII. Obligation of the Terms and Conditions of Sale and Delivery

Should individual or several provisions of these conditions of sale and delivery be or become invalid in whole or in part, the validity of the remaining provisions and of the contract shall not be affected.